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ABSTRACT

Assembly Bill (AB) 1402 authorized California's school districts to enter into design-build contracts for projects with design and construction costs exceeding $10 million. These guidelines are intended to accomplish the following purposes: (1) inform school districts of the design-build process under AB 1402; (2) help school districts to determine whether the design-build process is right for their project; and (3) help school districts comply with the statutory requirements of AB 1402 while avoiding potential problems that may occur during the project. The guidelines' sections address the request for proposal and prequalifcation of design-build entities, the selection of design-build entities, and implementation of the design-build contract. (EV)

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AB 1402 Design–Build Projects Guidelines

2002 Edition

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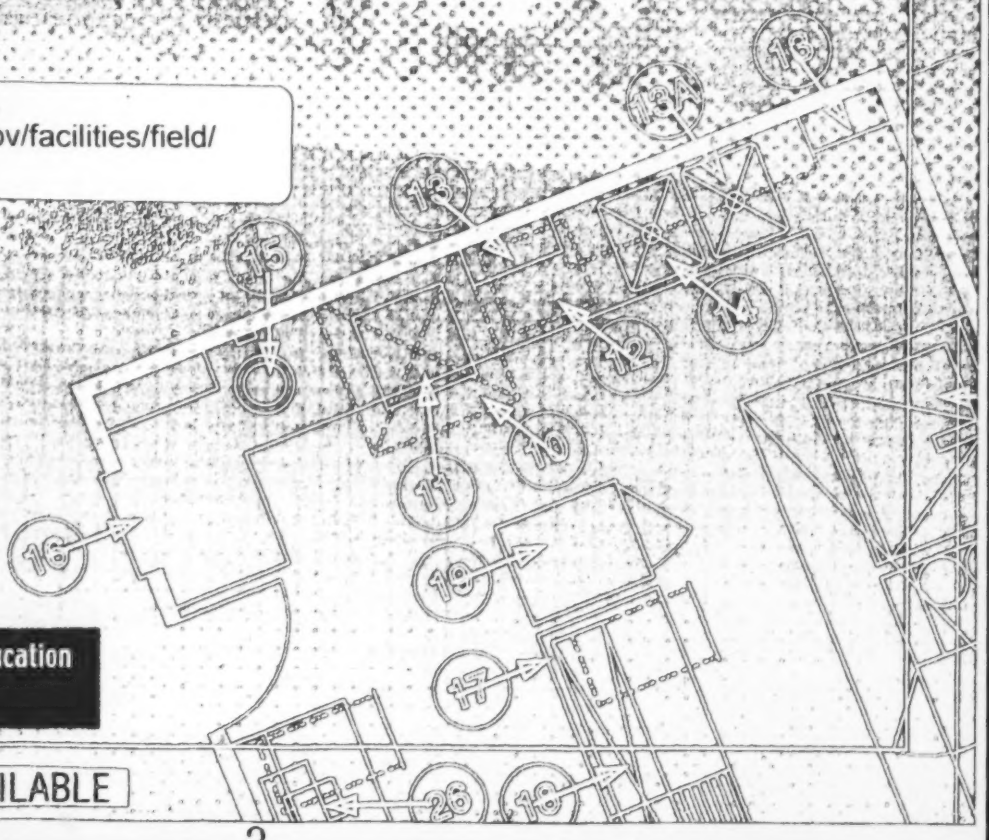

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Design-Build Project Guidelines

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Notice

The guidance in *AB 1402: Design-Build Project Guidelines* is not binding on local educational agencies or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, the document is exemplary, and compliance with it is not mandatory. (See *Education Code* Section 33308.5.)

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Introduction

Assembly Bill (AB) 1402 (which has been codified as *Education Code* Section 17250.10 et seq.), effective January 1, 2002, authorizes school districts to enter into design-build contracts for projects with design and construction costs exceeding $10 million. AB 1402 also required the California Department of Education (CDE) to develop guidelines for implementing design-build projects in consultation with the Office of the Secretary for Education; Department of General Services; Energy Resources, Conservation, and Development Commission; Seismic Safety Commission; school district representatives; and industry representatives. CDE brought together more than 30 participants and held ten meetings over a seven-month period to develop the guidelines. This document represents the contributions of the committee members as well as others involved in school facility design and construction throughout the state.

These guidelines are intended to accomplish the following purposes: (1) inform school districts of the design-build process under AB 1402; (2) help school districts to determine whether the design-build process is right for their project; and (3) help school districts comply with the statutory requirements of AB 1402 while avoiding potential problems that may occur during the project.

These guidelines are not regulations and are not mandatory. They merely offer suggestions and recommendations that school districts may choose to follow. Regulations are mandates that must be followed and are subject to the formal adoption process under the Administrative Procedures Act. These guidelines, however, are not a legal interpretation of any aspect of AB 1402 or any other regulation. They should not be considered a legal opinion or a substitute for experienced legal counsel. School districts now have a tool available to address the prospect of using the design-build process and some potential problems that may occur in completing a design-build project. Although the committee that developed the guidelines has attempted to be inclusive and comprehensive in its approach, school districts will

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undoubtedly have additional or different ideas and approaches to implementing design-build projects. The committee encourages creativity and analysis and acknowledges that there are many solutions, methods, and approaches to implementing a design-build project under AB 1402.

All parties involved in deciding whether the design-build method is appropriate for a specific project and who will play a role during the process are encouraged to read these guidelines. It is recommended that the school board members, superintendent, project managers, facility managers, and anyone assisting in the preparation of the Request for Proposal become familiar with the provisions of AB 1402 and these guidelines.

The guidelines are designed to be read in their entirety. Individual chapters often refer to other chapters; therefore, a greater understanding can be achieved by reading the guidelines as a whole. A glossary of terms used in these guidelines is provided in the back of this book.

Overview of Delivery Methods

On January 1, 2002, the enactment of Assembly Bill 1402 authorized school districts in the State of California to use a new method to deliver a school construction project. Until the passage of AB 1402, school districts were allowed to construct projects by using the traditional processes of design-bid-build (DBB) and lease-lease back (LLB). AB 1402 broadened the existing methods of project delivery to include design-build for projects with design and construction costs exceeding $10 million.

Traditional DBB is the most widely used method of project delivery in the California public school system. Under DBB the school district hires a design professional (typically an architect) to create documents from which general contractors will bid. The contractor selected to build the project is the responsible bidder who submits the lowest bid.

The LLB process (*Education Code* Section 17406) establishes a contract by which the district owns a piece of property and leases it for what is usually a nominal amount to an entity that is obligated to construct a school on that site. That entity then leases the completed school and site back to the district for a specified period of time at a specified rental amount. At the end of the lease, the school and site then become the property of the school district. The district's adoption of completed plans and specifications is a prerequisite for entering into the lease agreement. Procurement under the terms of *Education Code* Section 17406 does not require the selection of the lowest responsible bidder, allowing flexibility in contracting ranging from DBB to design-build.

Design-build is a method of project delivery that combines the design and construction functions and vests the responsibility for such functions with one entity: the design-builder. Under AB 1402 the school district defines its needs, issues a Request for Proposal (RFP) to prequalified design-build entities, and selects one of the proposing entities to design and build the project on district-owned property.

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One of the many distinctions between design-build and DBB is the level of design undertaken by the school district prior to award of the construction contract and the level of specific, or prescriptive, criteria in the bid documents. Typically, under the DBB process there is an ongoing interaction between the district and the architect during the development of the design, thereby allowing school districts to define and select many of the products and systems to be specified in the contract documents. Once the architect completes the design, contractors bid on the project.

With design-build, school districts typically communicate their desires clearly in the RFP, specifying performance criteria in lieu of brand names and model numbers, leaving some of the decision making to the design-build entity. Although certain project components may be specified as district standards, such as keyed locksets or heating and cooling equipment, design-build entities will be required to provide a completed project that performs at or above the minimum performance specifications set forth in the design-build contract. The selected design-build entity will complete the design documents to a level necessary to obtain required agency approvals and construct the project.

The design-build process changes some fundamental relationships between the school district and the designers and builders. With the traditional DBB method, the district has two separate contracts: one with its architect and one with its contractor. A design-build entity includes an architect and contractor, so only one contract is needed between the district and the design-build entity. A DBB construction contract includes completed design documents approved by the Division of the State Architect (DSA). A design-build contract will include performance criteria and possibly some design documents from which the design-build entity will create completed and DSA-approved documents. This basic difference in contract components broadly identifies the roles of the school district and the design-build entity: In a design-build contract the district clearly defines its needs and the expected level of performance, and the design-build entity designs and constructs a completed project that conforms with those requirements.

A flowchart illustrating the DBB and design-build processes is provided in Figure 1 for comparison purposes.

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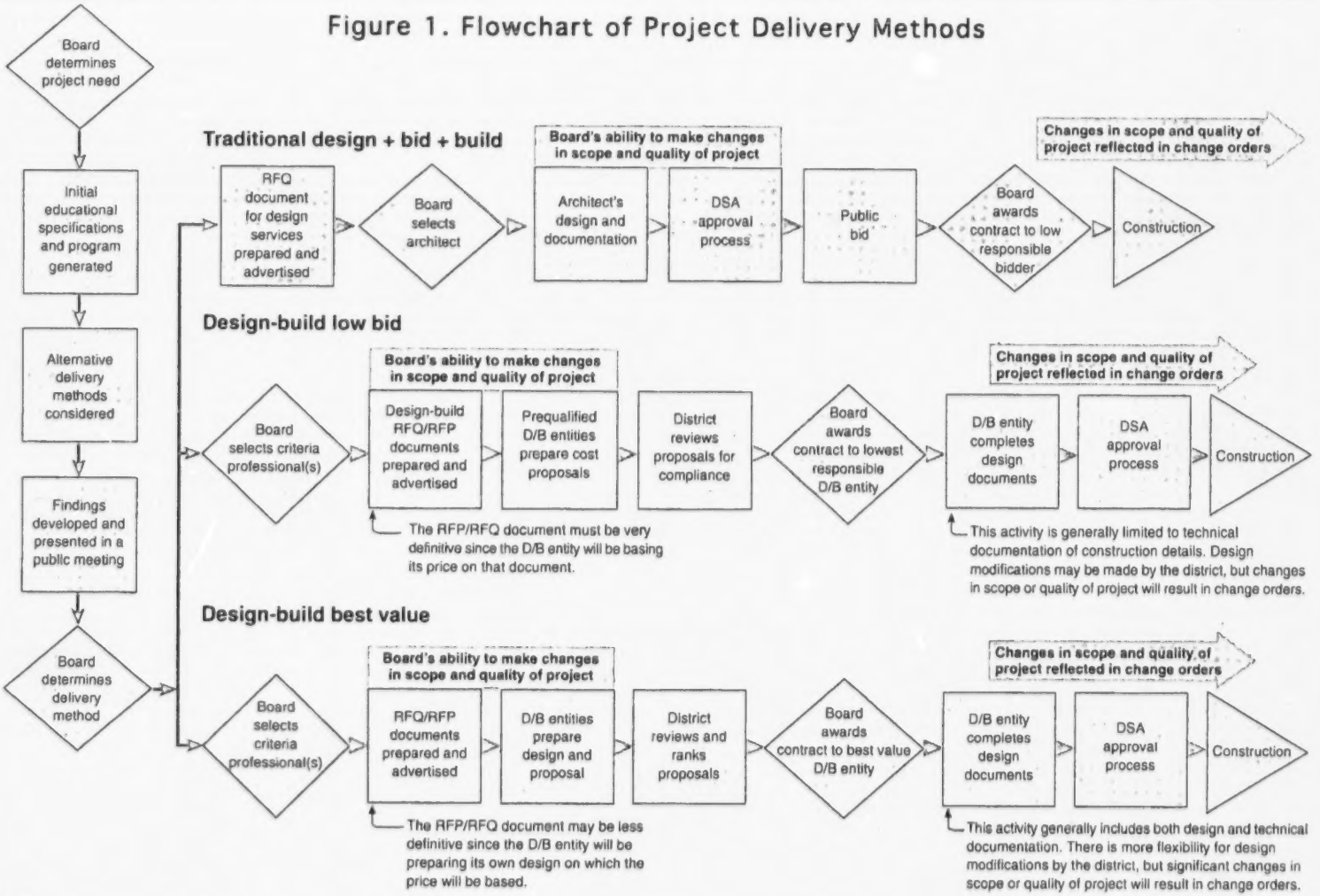
Figure 1. Flowchart of Project Delivery Methods


Board determines project need
Initial educational specifications and program generated
Alternative delivery methods considered
Findings developed and presented in a public meeting
Board determines delivery method
Traditional design + bid + build
Board's ability to make changes in scope and quality of project
Changes in scope and quality of project reflected in change orders
RFQ document for design services prepared and advertised
Board selects architect
Architect's design and documentation
DSA approval process
Public bid
Board awards contract to low responsible bidder
Construction
Design-build low bid
Board's ability to make changes in scope and quality of project
Changes in scope and quality of project reflected in change orders
Board selects criteria professional(s)
Design-build RFQ/RFP documents prepared and advertised
Prequalified D/B entities prepare cost proposals
District reviews proposals for compliance
Board awards contract to lowest responsible D/B entity
D/B entity completes design documents
DSA approval process
Construction
The RFP/RFQ document must be very definitive since the D/B entity will be basing its price on that document.
This activity is generally limited to technical documentation of construction details. Design modifications may be made by the district, but changes in scope or quality of project will result in change orders.
Design-build best value
Board's ability to make changes in scope and quality of project
Changes in scope and quality of project reflected in change orders
Board selects criteria professional(s)
RFQ/RFP documents prepared and advertised
D/B entities prepare design and proposal
District reviews and ranks proposals
Board awards contract to best value D/B entity
D/B entity completes design documents
DSA approval process
Construction
The RFP/RFQ document may be less definitive since the D/B entity will be preparing its own design on which the price will be based.
This activity generally includes both design and technical documentation. There is more flexibility for design modifications by the district, but significant changes in scope or quality of project will result in change orders.

Notes

1. The flowchart indicates the major activities. Numerous subactivities will be required, but there is no attempt to identify time frames.
2. The two design-build sequences appear to be identical, but there are significant differences that are noted on the diagram.
3. The law does not require that the criteria professional(s) needs to be selected in the same manner as the architect, but the board may elect to do so.

Design-Build Under Assembly Bill 1402

Design-build is:

- An alternate project delivery method in which school districts select a design-build entity to provide design and construction services under one contract
- A procedure for school districts to communicate performance criteria for the completed project rather than prescribe products and methods
- A means to prequalify and select a design-build team based on factors other than price alone
- An opportunity for school districts to allocate risks to those parties most capable of handling those risks
- A different method for completing a project that requires a different approach and level of involvement by school districts in order to realize the possible benefits of the design-build process

On the other hand design-build is *not:*

- A "cure-all" for problems that school districts may have experienced during traditional DBB projects
- A method to reduce or eliminate the amount of preparation required by a school district to complete a project
- The same process as design-build in the private sector (AB 1402 and California codes concerning school design and construction make the design-build process unique for schools in this state.)
- For school districts that are uncomfortable with the responsibilities and requirements necessary to successfully complete a design-build project
- A method to eliminate change orders or risks not properly allocated in the contract

Advantages and Disadvantages

Now that another method of project delivery is available to school districts, deciding which is the best method for a particular project becomes very important. The design-build method under AB 1402 is intended to offer several advantages over DBB for appropriate projects; however, school districts should understand all the options for a specific project to make the best decision. The following information is a generalization of the advantages and disadvantages of design-build and may not apply to all projects.

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Possible Advantages

The possible advantages of design-build under AB 1402 are as follows:

- **Simplified contracting and contract administration:** There is one contract with the design-build entity instead of separate contracts with an architect and a contractor.
- **Cost containment:** The design-build entity is under a contract to complete the project meeting the school district's stated requirements within the contract price.
- **Reduced number of change orders and disputes:** Errors and omissions in the design are the responsibility of the design-build entity. Proper allocation of risks under the design-build contract reduces the potential for change orders.
- **Reduction in adversarial relationships:** Designer and builder are teamed together, working under a single contract. This teaming can significantly reduce traditional conflicts and finger-pointing between designer and contractor.
- **Cost savings:** Innovative, cost-effective solutions meeting performance criteria can be achieved.
- **Time savings:** The design-build entity is allowed the freedom to explore time-saving construction methods or systems while meeting the district's stated criteria. Early communication between designer and builder can help prevent construction delays.
- **Early cost definition:** Project costs are determined much sooner than with the traditional DBB process.
- **Greater risk shifting and more efficient risk allocation:** A design-build contract can be written to assign appropriate risks to the parties most capable of managing them. The vesting of design and construction functions in one entity allows for a much greater allocation of risk to the design-builder than in a traditional DBB contract.
- **Alternative selection process:** Design-build entities may be selected on the basis of factors other than price alone; therefore, design-build entities seeking to do future work with a district have an incentive to perform well. Design-build also provides school districts with the flexibility to develop an evaluation and scoring process that reflects the goals and needs of a specific project.

Possible Disadvantages

The possible disadvantages of a design-build contract are as follows:

- **Misconception:** School districts unfamiliar with the design-build process may have a preconceived idea that this method automatically eliminates change orders, expedites project completion, and saves money. As with any delivery system, the benefits that can be achieved, if any, are largely dependent on many things, including a high-quality RFP, an informed district staff, and a well-qualified design-build entity.
- **Inexperience:** Most school districts are familiar with their role under the traditional DBB method. Design-build requires different contracting and decision-making processes for school districts. School districts lacking expert legal and design assistance may face significant problems unless they are already familiar with the design-build process.
- **Less control:** The design-build entity is included in the process *before* plans are finalized. School districts entering into a design-build contract must allow the design-build entity to make certain decisions that may have been made by the district on previous DBB projects. Failure to include in the contract specific requirements desired by a district may result in decisions made by the design-build entity that do not meet the district's educational needs.
- **Potentially higher costs:** Whether design-build will be less expensive than DBB on a given project is unclear. Although design-build efficiencies, design flexibility, and the ability to innovate that are afforded the design-builder are frequently reflected in reduced cost, increased risk allocation may result in a higher contract price that includes contingencies. Any savings realized by the design-build entity may not be passed along to the district. Additionally, a design-build entity that agrees to a guaranteed maximum price before receiving bids on the work may propose substituting less costly materials to offset bids that may be higher than anticipated.
- **Increased public involvement and administrative tasks:** Under AB 1402 school districts are responsible for (1) holding a public meeting to determine whether design-build is appropriate for a particular project; (2) preparing a qualification process; (3) establishing a labor compliance program or entering into a collective bargaining agreement; (4) reporting to the Legislative Analyst's

Office at project completion as well as complying with other duties outlined in AB 1402.

- **RFP preparation:** A significant amount of time, effort, and expertise is needed to produce the RFP. Translating the district's needs into clear performance criteria that provide sufficient specificity and appropriate flexibility is a difficult task and, if done improperly, may adversely affect any potential benefits of the design-build process. This point cannot be overstated.
- **Potential for disagreement:** Because the design-build contract is based on performance criteria and preliminary design documents, the interpretation of these documents may be the subject of potential disagreement between the district and design-build entity. Additionally, the district architect's interpretation of the RFP plans and specifications may mean something completely different to the design-build entity's architect.
- **Potential disagreement on the project inspector:** By regulation, the district's choice of an inspector must be approved by the architect and structural engineer of record. Because the architect and engineer are a part of a team with the contractor, their opinions may be influenced by the contractor's opinion.
- **Expedited decisions:** After the design-build entity is selected, decisions required of the district must be made more quickly than may be anticipated. Because the design-build entity has a fixed schedule for design and construction, there may be little time for consultation with the district. Delays in making decisions may be costly.

There are some key characteristics of design-build with a properly prepared RFP. They are as follows:

Risk Shifting

The design-build method allows for greater shifting of risk to the design-builder, particularly in the areas of design defects, efficacy, and warranties. For example, errors and omissions in design documents are the responsibility of the design-build entity. In developing the RFP and the design-build contract, school districts should carefully assess project risks and determine whether they or the design-builder are best able to manage those risks efficiently and cost effectively. Shifting of inappropriate risks to the design-build entity that should be borne by the school district in a given instance will increase the design-build contract amount accordingly.

Team Selection

Factors other than price alone may be considered in selecting a design-build team. School districts should ensure that the evaluation process and criteria are adequately described in the RFP in order to minimize the potential for protests.

Schedule

Construction schedules may be shortened because of innovative systems and methods proposed by the design-build team.

Cost Certainty

The cost of the project may be determined early in the process. The design-build team bears the responsibility for delivering the project for the contract amount.

Decision Making

Much of the decision making during the completion of design development and contract documents and construction may be shifted from the district and its designers to the design-build team.

Creativity, Innovation, and Efficiency

As the designer works with the builder and collaborates with the district, all parties may find creative solutions, innovative approaches, and efficient methods and systems.

Role of the School District

School districts must develop complete and clear RFPs and respond in a timely manner to issues raised during the design and construction phases. They must have the ability to communicate their needs in a manner that defines performance minimums while allowing for creative solutions to those requirements.

Performance Criteria Compliance

Because the designer and builder constitute a team that will produce a completed project based on performance criteria established by the school district, verifying compliance with the criteria is an important but difficult task. Complete RFP documentation can reduce the burden.

Learning Curve

The design-build method is a new experience for public school districts. Creating a qualification process, selection method, RFP, and contract is a responsibility that requires a great deal of time and expertise on the part of the district and its consultants to realize the benefits of the design-build method. A school district undertaking more than one design-build project may need to develop different approaches to these processes and documents on a project-by-project basis.

Section 1
Request for Proposal and Prequalification of Design-Build Entities

Communicating facility requirements thoroughly enough to ensure compliance without limiting the design-builder's creativity is a significant task. Using performance-based requirements and quality standards rooted in current construction practices establishes the design-builder's responsibilities while accommodating flexible solutions and innovation. Because the design-build entity's cost proposal is not based on completed design documents, the RFP and design-build contract should clearly set forth the requirements, specifications, and allocation of project risks in order to avoid disagreements with the school district that may arise over what was implied in the RFP. The design-build process does not eliminate the possibility of change orders created by incomplete or inaccurate information in the RFP package. Inclusion of all relevant and necessary information is a good prerequisite for effective and optimal risk allocation.

By the time an RFP is drafted, much information should be in place. The most critical part of the design-build process is the information describing the school district's needs and requirements, as well as the results of site surveys and geological investigations of the project site. The success of the project will be a direct result of the amount of preparation and information conveyed by the district. A school district cannot expect specific elements or performance requirements to be included in the project unless they are made a part of the contract.

As required by AB 1402, an RFP shall be prepared. Section 2, "Selection of Design-Build Entities," contains information regarding the two methods of selection and the way in which each method affects the preparation of the RFP.

Performance specifications and any plans to be included in the RFP must ". . . be prepared by a design professional duly licensed or registered in this state." School districts should hire a licensed design team

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to prepare the RFP, including those with mechanical and electrical engineering expertise in school facility design. Optimally, the design team should know the school district's specific needs and desires. Once retained, the licensed design team (also referred to as the criteria professional[s]) may assist with evaluation of the design-build team's proposals as well as take a role on the school district's behalf in providing oversight throughout project development. The licensed design team is ineligible to participate on a design-build team.

The educational specifications should be comprehensive, complete, and up-to-date prior to the drafting of the RFP. A school district that needs assistance in preparing some or all of the educational specifications should consider hiring a competent, experienced consultant. The school district may elect to use the same design team that helped to create the educational specifications to draft the RFP. In 1997, CDE published a document on preparing educational specifications titled *Educational Specifications: Linking Design of School Facilities to Educational Program.* This resource for school districts may be downloaded from the Internet <*http://www.cde.ca.gov/facilities/field/publications.htm*> or may be purchased from CDE Press by calling the sales office (800-995-4099).

Qualification Process

The school district shall establish a procedure to qualify candidates prior to the issuance of the RFP. The procedure must include the following components:

- A standard questionnaire developed by the director of the Department of Industrial Relations (DIR) <*http://www.dir.ca.gov*>.
- Inclusion of the qualification criteria stated in AB 1402. The DIR questionnaire includes many of the requirements listed in the statute. School districts should compare the DIR questionnaire with the requirements in the statute to avoid repeating information.
- Additional qualification criteria desired by the school district. The DIR questionnaire is general and does not address project-specific questions; therefore, school districts may want to add their own questions. They may include the geographic location of the design-build entity, list of previous projects the members of the design-build entity have worked on together (as a design-build entity or not), list of previous projects similar to this project, specific personnel assigned to the project, recent client list, and so forth.

School districts should consider submitting their additional criteria for review by legal counsel.

Evaluation of Submitted Qualifications

School districts should determine whether qualifying design-build entities will allow them to submit proposals or whether the entities' qualifications will be ranked, allowing only a specified number to submit proposals (short listing). This decision will likely have a significant impact on the level of information sought and how the proposal is evaluated. If all qualified teams are allowed to submit proposals, the prequalification may simply seek information showing that the teams are qualified. If, however, a short listing is used, the district will need to solicit information that may be of a more comparative nature with other teams. In either case the qualification process should be described in the Request for Qualifications (RFQ) document in much the same manner as the selection process is described in the RFP.

Project Description

The RFP should include:

1. **Educational specifications**

   California Code of Regulations, Title 5, Section 14030, requires that school districts submit to CDE educational specifications for new school facilities. Thorough, comprehensive educational specifications are a valuable part of the design-build contract.

2. **Project program**

   - Administrative obligations of the design-build entity:

     A. Compliance with applicable *California Building Code* regulations, *Title 5* regulations, and CDE requirements for project approval.

     B. Compliance with regulations of the Office of Public School Construction (OPSC) if state funds are used <*http://www.opsc.dgs.ca.gov/*>. Submittal requirements include site diagrams, summary of school site and classroom inventory for determination of funding eligibility, DSA approval of plans and specifications, a cost estimate for site development, and approval of the site and plans by CDE for funding requests.

C. Compliance with DSA regulations. This includes approval of the plans and specifications by DSA as well as certain requirements during construction by the design-build entity (e.g., change order approval, final verified report submission, etc.) <*http://www.dsa.dgs.ca.gov*>.

D. If desired by the school district, compliance with selected guidelines from the Collaborative for High Performance Schools (CHPS) <*http://www.chps.net/*>. Following the CHPS guidelines may result in facilities that ". . . provide better learning environments for our children, cost less to operate, and help protect the environment."

E. Identification of who is responsible for obtaining state and local approvals. This point is important because any ambiguity may result in additional time and money spent to resolve the issue. Often both parties assume the other is responsible, only to realize nothing has been done. The entire project may be delayed if the responsibility is not clearly identified early in the process. It is critical to obtain approvals from the state or local health department, utility companies, and the local fire department. Early contact with them is recommended. School districts may also want to list their contacts at the city, county, fire department, health department, and others so proposers may know what is required for their approval, if applicable.

- Project description including:

A. Building(s) type and size.

B. Site element types and sizes (playground equipment, ball courts, playfields, running track, etc.). In 2000, CDE published a document for site planning titled *Guide to School Site Analysis and Development.* The guide may be downloaded from the Internet <*http://www.cde.ca.gov/facilities/field/publications.htm*>.

C. Parking and site access requirements. The guide noted above includes parking criteria for schools.

D. Description of physical relationships between building spaces and between buildings and other site elements.

E. Specific architectural style or concept (if desired).

F. Performance specifications and prescriptive specifications regarding materials, systems, performance criteria, energy efficiency, life cycle costs, environmental issues, and so on.

G. Educational requirements as they relate to facilities.

H. Drawings.

3. School district standards and special requirements

- Accommodation for future expansion. Planning for future expansion by sizing equipment; electrical panels; data, water, gas, and sewer lines can reduce future costs and problems.
- Possible joint-use. Will any part of the project require joint-use by the community (parks, library, playfields, etc.)? It is critical to know how this is accomplished and what contractual requirements are included. Legal counsel should be considered. Participating community organizations (e.g., park districts) should be involved very early in the design-build process.
- Technology standards. These include computer networking, telephone communication, security, mechanical, and electrical systems.
- Possible reuse of a design. Does the school district want to reuse an existing school facility design? Reuse of an existing design must be carefully handled in the design-build contract to effectively allocate design risk to the design-build entity.
- Project quality. In the design-build method, the owner generally has less direct control over product selection than in traditional methods of project delivery; therefore, school districts should specify in the RFP the expected quality and technical requirements through the use of performance specifications. Because the price submitted by a design-build entity may be based on early design documents, there may be a discrepancy between the school district's expected quality level and that perceived by the design-build entity. The requirements for quality and performance in the RFP package should be clearly stated. Quality can also be improved in design-build through the school district's design review process, which should also be delineated in the RFP and contract.
- School district ownership of design documents. Design documents provided by the design-build entity should indicate school district ownership (*Education Code* Section 17316).

- Mitigation measures. Any mitigation measures required by the California Environmental Quality Act (CEQA) to be implemented during construction should be included.

4. **Geotechnical reports, boundary and topographic surveys, locations and sizes of utilities, environmental issues, and geology hazards**
   - Failure to provide this information may affect the ability of the school district to shift risks to the design-build entity. Where risk is shifted to the design-build entity, contract costs will reflect the increased risk and contingencies. Omission of such items may also limit the school district's ability to find qualified design-build teams that are willing to accept the allocation of risk desired by the school district.
   - The necessary geotechnical information and site survey results should be made available to the design-build teams. Information gaps can lead to procurement delays and higher costs to allow for contingencies.
   - School districts should be aware of the risks involved in proceeding with the RFP prior to obtaining site approval by CDE, Department of Toxic Substances Control (DTSC), and local planning authorities and complying with CEQA. Significant costs and time may be expended because of litigation if approval is not subsequently obtained from CDE and DTSC.

5. **Budget parameters**
   - AB 1402 requires an expected cost range to be a part of the RFP. The school district may want to list the source of funds and include contract language to mitigate the possibility of unguaranteed state funds when the design-build contract is signed. Significant costs and time may be expended, including the potential for litigation, if funding is not obtained in a timely manner.
   - Provisions for changes in the work, including eligibility, supervision, labor costs, and allowable markup, as well as changes to the schedule, must be included. What are the implications for exceeding the schedule?
   - A contingency allowance for scope changes and unknown site conditions should be identified. This information need not be made available to design-build entities, but it is important in

planning for possible additional project costs. In some instances, use of allowances in the contract for specific risk areas (e.g., hazardous materials) may be an effective and a mutually acceptable method to reduce or share risk and maintain competitive pricing.

6. Schedule requirements

- At a minimum, the date of site availability and the date of desired occupancy should be indicated.
- The schedule should also include the time needed for installing fixtures, furnishings, and equipment and commissioning.
- Establishing milestones may be helpful, such as:

  A. Issuance of Notice to Proceed date

  B. Dates for design submittals to the school district

  C. DSA submittal and/or approval dates

  D. OPSC submittal and/or approval dates

  E. CDE plan submittal and/or approval dates

  F. Start and completion of construction dates

  G. Date of occupancy

  H. Final project closeout and acceptance dates

  I. Other

- Enforcement of the schedule through liquidated damages or other means may be considered.

  Who takes the responsibility and risk for DSA approval time? An aggressive schedule might constrain the design or type of construction. Requiring the design-build entity to submit a milestone schedule with its proposal should also be considered and may be necessary if a completion deadline is desired by the school district.

7. Selection process (See also Section 2, "Selection of Design-Build Entities.")

- The school district must use one of the evaluation processes described in AB 1402 (*Education Code* Section 17250.25[c]), which allows for a numeric or qualitative rating of proposals. The RFP shall identify all the factors the school district will consider in evaluating proposals, including price and nonprice factors. The school district must decide whether to use a "lowest

responsible bid" selection process or a "best value" selection process.

- A "lowest responsible bid" selection process would determine the successful, prequalified design-build entity based solely on price. Benefits of a lowest responsible bid selection include the ease and speed of the evaluation, a decreased likelihood of proposer protest, and a determination that is based primarily, if not solely, on purely objective factors. The disadvantages of this method include its inflexibility, exclusion of important and relevant nonprice factors, the possibility that the least expensive proposal may not result in the best project (in terms of quality, utility, or appearance), and lack of reward for innovation and creativity by design-build teams unless such innovation and creativity result in price savings. Because design-build entities will be submitting bids based solely on documents provided by the school district and the only criterion for selection will be price, the RFP should include drawings and specifications completed to a level that the educational program and other criteria will be met. Less complete documents may result in an award to a low bidder with an unacceptable design approach, thereby resulting in an unsatisfactory project or expensive and time-consuming change orders to achieve the desired result.

  School districts should keep in mind the importance of maintaining a balance between providing necessary information to meet their needs and allowing design-build entities to remain "flexible" in the areas less important to the function of the facility (from the district's perspective) so as to achieve the desired cost savings.

- The "best value" selection process allows school districts to include nonprice factors as a part of the evaluation criteria and process. This criterion can allow school districts to prioritize the importance of features to be provided by the successful design-build entity. AB 1402 allows school districts to establish a process that evaluates proposals based on such factors as design approach, life cycle costs, project features, and project functions. The Design-Build Institute of America's *The Design-Build Process Utilizing Competitive Selection* is a helpful resource for school districts considering this method <*http://www.dbia.org*>.

- AB 1402 requires that at least 50 percent of the total weight of selection criteria shall be based on price, technical expertise, life cycle costs over 15 years or more, the availability of a skilled labor force, and an acceptable safety record. School districts should review the requirements of AB 1402 closely and seek legal counsel experienced in design-build to establish selection criteria.
- Other possible criteria may include ease of operations and maintenance, adherence and commitment to CHPS guidelines, schedule, quality, durability, innovation, experience of the design-build entity, the design-build entity's approach to design management, quality control, traffic management, and safety. School districts may wish to identify the items they will evaluate and set a maximum page limit for responses.
- Benefits of a "best value" selection process include the ability of the school district to use relevant and important factors other than price to select the successful design-build team, thereby enhancing the development and ultimate use of the project. The "best value" approach is a recognition that price is not the only important factor in a successful project. The disadvantages of "best value" include increased time and administrative resources required for the evaluation process, unfamiliarity by school districts with a nonprice evaluation, possible infusion of subjectivity into the evaluation process (e.g., quality to one person may not be quality to another), and possibly increased potential for protest due to the nature of nonprice evaluation. Development of, and compliance with, fair criteria and a fair evaluation process can significantly reduce the potential for protests.
- AB 1402 requires that school districts disclose their selection criteria. The system established shall be objective and quantifiable. Purely subjective criteria should, where possible, be avoided in order to reduce challenges of the results by unsuccessful firms. Necessary information regarding the selection process and what the school district is looking for in terms of proposals and evaluation criteria should be included in the RFP and given to all proposers.
- School districts should also include a provision in the event of a tie.

8. Industry review

- If the procurement schedule permits, the school district may consider conducting an industry review process prior to issuing the final RFP. With an industry review process, drafts of the RFP and contract are circulated to interested parties (or prequalified design-build teams) to get their individual and/or collective opinion and comment prior to final issuance. This method can assist in properly allocating risk between the school district and the design-build team.

Request for Proposal Checklist

Note: This checklist for school districts is not intended to be all inclusive, but it is a general overview of items. Each project is different and will have unique task requirements that may not appear below.

Before Preparation of the RFP

- ☐ CDE/DTSC approve site.
- ☐ CDE approves educational specifications.
- ☐ School board issues written findings warranting design-build in accordance with AB 1402.
- ☐ School board adopts resolution approving design-build.
- ☐ Review AB 1402 design-build guidelines.
- ☐ Identify funding source and begin process through the Office of Public School Construction (OPSC) if state funds are to be used.
- ☐ Retain design team to assist in preparing any plans and specifications.
- ☐ Consider legal counsel for preparation of RFP.
- ☐
- ☐

Preparation of RFP

- ☐ Review RFP requirements noted in AB 1402.
- ☐ Review/update educational specifications.
- ☐ Prepare RFP to address AB 1402 requirements and review AB 1402 design-build guidelines.
- ☐ Establish ranking system in compliance with AB 1402.
- ☐ Establish a selection process in compliance with AB 1402.
- ☐ Review RFP for completeness and coordination with AB 1402 design-build guidelines.
- ☐ Consider legal counsel to review RFP and supporting documents.
- ☐ Invite interested design-build entities to submit standard prequalification questionnaire prepared by the Department of Industrial Relations and other qualification-related information desired by the school district.
- ☐
- ☐

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Section 2
Selection of Design-Build Entities

Under AB 1402, *Education Code* Section 17250.25(c) allows two options for selection: lowest responsible bid or best value selection of prequalified candidates based on a weighted scoring method. Although the lowest responsible bid method is fairly well defined, best value selection may include anything from submission and ranking of proposal documents to a design competition requiring drawings, specifications, and additional information for review and ranking. School districts should determine what is most important for a successful project and choose a selection process that will help ensure the best results while complying with the statute.

The best value selection process must include consideration of price as one factor, but other factors must be considered as well.

Lowest Responsible Bid Method

Prequalified design-build entities submit price proposals based on the RFP, and the contract is awarded to the lowest responsible bidder.

School districts asking contractors or design-build entities to give them a price for products and services may already know the pitfalls of providing vague or incomplete documents. The end result is usually adversarial and leads to schedule delays and expensive change orders. As discussed in Section 1, the more that specific, detailed information is given, the more accurately the price will reflect what is desired. For example, materials that incur a lower initial cost may be proposed that could be inappropriate for schools subject to heavy use. Comprehensive drawings, details, and performance specifications requiring products with good life cycle costs can help protect school districts.

If the school district is interested in providing a prescribed design, then the traditional method of DBB may be considered. Why consider

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a lump sum design-build method over the traditional DBB on a particular project? In addition to possible time savings, another intended benefit of the design-build process is to establish one point of responsibility for the completed project. For example, if the district hires a design-build entity to provide a school with compressed air in the science classroom, the school district should not have to pay for a change order for a compressor that was overlooked by the design team.

As stated above, some responsibility for errors and omissions may be shifted from the district to the design-build entity, but this occurs only if responsibilities are clearly defined. In the example cited above, if the RFP package calls for compressed air in the science classroom, the district should expect one compressed air outlet in the room. If what was really wanted was compressed air at each desk, that expectation should have been clearly stated in the performance specifications.

Performance or "Best Value" Method

Another method for selection of a design-build entity is the "best value" method. This method gives the school district flexibility in awarding a project based on factors other than price. The factors determined by the district, as well as price and other criteria listed in the statute, will determine the best value to the district. Price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record must represent at least 50 percent of the total weight given to all criteria in AB 1402. This requirement does not prevent a district from assigning more than 50 percent to those factors or assigning the remaining 50 percent of the selection criteria weight to other specific factors (e.g., energy efficiency, use of recycled materials, flexibility of building spaces, appropriateness of architectural features, construction schedule, technology).

Although the lowest responsible bid method focuses on the cost of the final product, the best value method can focus on cost, design, the process, and the ability of the design-build entity to implement the project. Placing emphasis on certain criteria can alter the composition of the proposing design-build entities. For example, requiring that a school have highly sophisticated data systems might cause some proposers to include a technology consultant as a part of their design-build entity. AB 1402 stipulates that a subcontractor not listed

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by the design-build entity shall be awarded through a bidding process. School districts should be aware of what tasks will be bid in contrast to what tasks will be performed by the design-build entity. Who the design-build entity includes as a part of its team should be a major factor during selection as some of the best value selection criteria may be performance- or qualifications-based. AB 1402 states that a design-build entity must be ". . . able to provide appropriately licensed contracting, architectural and engineering services as needed pursuant to a design-build contract."

The required selection criteria are as follows:

1. Price

There are three ways in which a school district may use price as a criterion. A school district may consider the price proposed by the design-build entity simply as confirmation that the requirements of the RFP are met within the budget. Or the district may evaluate the design-build entity's total lump sum cost of design and construction of the project. Alternatively, the district may consider the cost of developing plans and specifications and product information that will allow the district the ability to prioritize elements of the project while staying within the overall budget. This last alternative would create a process over several months where the district would work closely with the selected design-build entity to refine the project's components while constantly verifying these decisions with actual costs.

2. Technical Expertise

The school district should clearly define the expertise sought and what that expertise should include. Résumés of the architect, engineers, construction project manager(s), and primary project manager are only the beginning. Specific experience in one or more of the selection criteria may be required. What are the qualifications of the mechanical engineer if the school district requires the proposer to provide a school complying with the CHPS guidelines? What experience does the contractor have in building projects similar to this one?

To avoid being challenged by unsuccessful proposers, school districts should attempt to establish an objective method of rating technical expertise. Care should be taken to avoid rigid and inflexible rating systems as the school district will certainly be unable to think of all possible issues that may arise relating to expertise. Information on the rating system should be made available in the RFP package to design-build entities.

3. Life-Cycle Costs over 15 Years or More

School districts will need to become familiar with techniques and standards for determining life-cycle costs or seek such expertise to assist in developing the RFP and evaluation of responses. Providing clear, quantifiable methods for presenting and determining costs will help to ensure that design-build entities present information that can be compared with other competitors.

School districts should consider total life-cycle costs for major components of their projects. This criterion includes both the initial cost and all future costs over a 15-year period or longer (operating costs, repair, maintenance, and replacement). For example, energy costs may vary over time, so school districts may elect to establish an escalation rate or a basis to be used for energy costs (which should be included in the RFP). Other factors related to energy are comfort level (indoor temperature) and lighting levels, which should be stated so that one proposal can be compared with another.

Analysis of life-cycle costs may be extensive and detailed. School districts should decide in advance which project elements will be used to evaluate proposals. An independent consultant should be considered for analyzing this area of the proposals.

Two Web sites offer helpful information on building design and energy efficiency. The Collaborative for High Performance Schools (CHPS) <*http://www.chps.net*> has information on operating costs, energy-efficient programs, incentives, and technical assistance. The U.S. Green Building Council <*http://www.usgbc.org/*> has additional information on the LEED Program (Leadership in Energy and Environmental Design).

4. Skilled Labor Force

Education Code Section 17250.25(c)(2)(F) defines the meaning of skilled labor force availability: ". . . an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years." School districts should be careful to verify that an agreement exists with the design-build entity when contributing labor on the project and that agreements exist for all listed trade contractors and their subcontractors. For trade contractors or subcontractors not identified at the time the proposal is submitted, school districts should require certification of future confirmation of agreements for these subcontractors and any lower-tier subcontractors.

5. Safety Record

Contractors may satisfy the requirement to show their safety record in two ways as allowed in *Education Code* Section 17250.25 (c)(2)(G): An ". . . experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code." Some design-build entities may not directly employ workers who perform the labor, so it is recommended that an analysis include trade contractor safety records as well.

Optional Criteria

The following criteria are not required under AB 1402 but should be considered by school districts when evaluating design-build entities:

1. Design Approach

The architecture of a school as well as the pride students and staff feel for their facility may be very important to a community's identity. If a school district decides to evaluate design-build teams on their design approach, it will need to determine and delineate how this factor can be quantified. This criterion is probably the most subjective one to be evaluated; therefore, school districts should define and prioritize their design objectives. This information should be available to design-build entities in the RFP package. The American Institute of Architects <*http://www.aia.org/*> has additional information, including data on the best value selection process.

2. Project Approach

How a design-build entity plans to manage a project is very important. Proposers may be asked to present their approach to budget control, quality control and quality assurance, value engineering, safety, staging and sequencing, interface between design team members and construction team members, strength of the team, team organization, local business involvement, project document control, and team management.

3. Project Features

One of the possible reasons mentioned in AB 1402 for selecting the design-build method over the traditional DBB method is the ability to obtain project features that would not be possible with DBB. The

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intent is to allow designers and contractors to work as a team and create innovative solutions.

During the selection process how does a district establish an environment that encourages creativity? One method is to present known problems to the proposing teams and allow them to submit solutions as a part of their proposal. Examples of known problems may include:

- **Specified project components rather than performance criteria.** What methods will the design-build entity implement to meet specified performance criteria without proposing something requiring unusual knowledge? For example, how can a design-build entity propose an energy-efficient HVAC (heating, ventilation, and air conditioning) system to a district in order to reduce operating costs when the district's maintenance staff lacks proficiency in maintaining that type of equipment? Would the energy savings over a period of time offset the cost of a maintenance contract or training of maintenance staff?
- **Architectural design rather than construction techniques.** Often what an architect draws can be constructed at a reduced cost or more quickly by using a different method or component without sacrificing aesthetics or quality. What procedures will the design-build entity implement to create an attractive campus at a reasonable cost in a short period of time? Design-build entities should be asked to provide a format for integrating design and construction that best benefits the district.
- **Control of subcontractors.** With design-build, some trades may be bid. How will the design-build entity ensure that the district's interests are protected? What role will the district have in dealing with members of the design-build team, whether they are listed or awarded by the design-build entity? Control of subcontractors is a two-edged sword and touches upon one of the potential benefits of design-build: shifting risk.
- **Substituted materials.** Materials that incur a lower initial cost may be proposed that could be inferior for schools subject to heavy use. Good performance specifications balanced by a thorough life-cycle cost analysis can help protect school districts.

4. Schedule

School districts should provide competing design-build entities with schedules illustrating significant funding, local and state approval, site availability, and occupancy milestones. Design-build entities

should include these milestones in a master schedule that indicates design and construction time. Schedules should be reviewed to determine whether the durations of activities are realistic.

What methods can the design-build entity propose to expedite the completion of construction documents and approval by the Division of the State Architect? Is the reuse of existing plans viable? Could a site development package be developed and approved by DSA to expedite construction once final plans are approved?

What methods and materials can the design-build entity propose that will expedite construction? Teams should be asked to provide itemized schedules illustrating the ways in which project delivery can be expedited.

5. Value Engineering

Although the design-build process provides for value engineering opportunities, school districts may want to allow competing design-build entities to include value engineering suggestions as a part of their proposals. Objective ranking could be structured around both initial cost savings and maintenance and life cycle costs.

6. Warranty

California law requires that a contractor provide a warranty on all work performed; however, school districts may want to request extended warranties on some major elements of the project, such as roofing, waterproofing, deck coatings, prefinished metals, hardware, and doors. Design-build entities should also allow school districts to obtain manufacturers' extended warranties. Other warranty-related considerations may include organizational processes, standard response and completion times, and document control. What level of response will be provided by the design-build entity rather than only the manufacturer?

Selection Process Checklist

Note: This checklist for school districts is not intended to be all inclusive, but it is a general overview of items. Each project is different and will have unique task requirements that may not appear below.

Before Selection of a Design-Build Entity

- ☐ Review AB 1402 design-build guidelines.
- ☐ Thoroughly review prequalification submittals.
- ☐ Notify proposing design-build entities that fail to meet the prequalification requirements.
- ☐ Establish a review committee with a diverse group of stakeholders if the "best value" method is used.
- ☐ Consider legal counsel for review of selection-method criteria and prequalification submittals.
- ☐ Ensure that all proposing design-build entities are informed of selection criteria according to AB 1402 (*Education Code* Section 17250.25[a][2][C]).
- ☐ Hold a preproposal conference to answer questions and provide clarification.
- ☐
- ☐

Selection of Design-Build Entity

- ☐ Compile design-build entities' scores, ensuring objectivity and accuracy if using "best value" method.
- ☐ Confirm that the legal entity that will sign the contract for construction is a part of the proposing entity and holds a general contractor's license in conformance with the contractor license law.
- ☐ School board issues written decision supporting the contract award, stating in detail the basis for the award.
- ☐ School board issues public notification announcing the award, the name of the successful candidate, the price, and the candidate's score.
- ☐
- ☐

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Section 3
Implementation of the Design-Build Contract

Because the contractual arrangement between the school district and design-builder is dramatically different from that under DBB, school districts should seek legal counsel experienced in the design-build process to help prepare the design-build contract. The American Institute of Architects, Associated General Contractors of California, and Design-Build Institute of America have drafted sample design-build contracts with various differences among them. School districts should review available options and use a contract that best serves their project needs.

Once a design-build team is selected, the school district will continue to play a key role in the development of the project. Review, suggestions, and critical decision making by the district are vital to ensuring success. Verification of decisions—whether they are supported by the education specifications and the project program—should occur regularly.

AB 1402 does not specify requirements of the contract between the school district and the design-build entity. As stated above, several professional associations have developed model design-build contracts, although most of them are for private-sector projects. Modifying a DBB owner-contractor agreement to fit design-build should be avoided because of the significant changes required and the potential risk of inappropriate language. Other than the inherent changes in the contract created by AB 1402, the agreement between the school district and design-build entity must conform to applicable codes, including the *Public Contract Code* and contractor license law <*http://www.cslb.ca.gov*>. Experienced legal counsel can assist in developing a suitable design-build contract and in ensuring compliance with AB 1402 and other relevant California codes. The contract should also reference the RFP because that is the basis of the design-build entity's proposal.

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The following resources may help in developing a contract:

- The Design-Build Institute of America's *Design-Build Manual of Practice* (Order Number 303) <*http://www.dbia.org*>
- The American Institute of Architects' *Handbook on Project Delivery* and documents A191 and A491 <*http://www.aia.org*>
- The Associated General Contractors of America's *AGC Contract Documents at a Glance* and 400 Series Documents <*http://www.agc.org*>

Appendixes A and B contains lists of publications and professional associations that may prove helpful.

The School District's Role

As with the traditional DBB method, the school district must be involved in decision making during the design phase of the project. One significant difference between the design-build and DBB method, however, is the increased importance of making decisions on time. A design-build entity will be under contract to deliver a complete and operational project by a predetermined date. Every delay that is caused by the school district has the potential to delay the completion and increase the cost of the project. By providing timely, concise direction to the design-build entity, the school district will play a key role in meeting the schedule and controlling costs. School districts should seek to avoid district-directed changes. Although the design-build method generally reduces the eligibility and incidence of change orders, school districts that frequently change or make significant changes to the design-build entity's scope of work, the project definition, or both can disrupt the design and construction process, resulting in increased cost and delays.

As design documents develop, the school district will have the opportunity to play a part in the selection and review of the project's components while being informed by the design-build entity of cost impacts, if any. As situations arise that require decisions to be made, constant testing and verification of the decisions should be made. Testing should come in the form of questioning whether a decision conforms to the educational specifications and project program. An RFP package containing performance-based criteria rooted in sound school construction practice may allow many component selections to be made by the design-builder with little or no direction from the

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school district. School districts, however, should always retain the right of design review and approval.

In addition to making decisions, school districts will need to carefully monitor the work of the design-build entity to determine whether it complies with the RFP and project schedule. According to AB 1402 (*Education Code* Section 17250.35[a]), "Any deviations from those standards may only be allowed by written consent of the school district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter." This person should be experienced in California school building projects and be able to effectively advise the school district.

The architect or structural engineer advising the school district may be assigned the following responsibilities:

1. Review the design-build entity's proposed schedule throughout the project.
2. Review the design-build entity's design documents for compliance with the school district's requirements.
3. Oversee the design-build entity's quality control program.
4. Advise the school district during the selection of the project inspector.
5. Review payment applications from the design-build entity.
6. Review construction progress and adherence to the schedule (and any recovery schedules).
7. Assist the school district in resolving any disagreements.
8. Advise the school district when negotiating substitutions or changes to the work.
9. Report periodically to the school board on the progress of the work.
10. Assist the school district in creating the report to the Legislative Analyst within 60 days of project completion.
11. Ensure the final project closeout documentation is complete.

During the design phase, changes may prompt negotiated modifications to the schedule, scope, or cost of the project. During the construction phase, changes in the work should be discouraged, if possible.

Retention Options

Retention of a portion of each payment to a contractor is a practice similar to current practices under California law. Design-build entities are allowed to substitute securities in lieu of retention from progress payments. Additionally, AB 1402 states (*Education Code* Section 17250.30[c)][4], "In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the school district and the design-build entity."

Labor Compliance

AB 1402 (*Education Code* Section 17250.30[d]) provides three options for ensuring labor compliance:

- "The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.50 of the *Labor Code.*"
- The school district ". . . shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.50 of the *Labor Code.*"
- The ". . . school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project."

Project Closeout

In addition to the project closeout procedures required by the Office of Public School Construction and the Division of the State Architect for state-funded projects, AB 1402 requires that the school district governing board shall submit a report to the Legislative Analyst's Office (LAO) within 60 days. A list of the minimum information to be included in the report is in *Education Code* Section 17250.45. A reporting form developed by the LAO is provided in the back of this document.

Education Code Section 17250.50 states: "A school district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst's Office required pursuant to Section 17250.45."

Implementation Process Checklist

Note: This checklist for school districts is not intended to be all inclusive, but it is a general overview of items. Each project is different and will have unique task requirements that may not appear below.

School District/Design-Build Entity Contract

- ☐ Review AB 1402 design-build guidelines.
- ☐ Consider legal counsel in developing a design-build contract.
- ☐ Verify that the contract follows AB 1402 for retention and labor compliance.
- ☐ Include or refer to the RFP in the design-build contract.
- ☐ Retain an architect or structural engineer to represent the district during the project.
- ☐
- ☐

Design and Construction Phases

- ☐ Verify and update the project schedule regularly.
- ☐ Respond to issues quickly and concisely to ensure project progress.
- ☐ Verify all decisions with the project program.
- ☐ Comply with requirements of the Division of the State Architect and Office of Public School Construction for project closeout.
- ☐ Submit a report to the Legislative Analyst's Office within 60 days of project completion.
- ☐
- ☐

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Design-Build Project Checklist

Note: This checklist for school districts is not intended to be all inclusive, but it is a general overview of items. Each project is different and will have unique task requirements that may not appear below.

Investigation of Design-Build Under AB 1402

- ☐ Determine whether the design and construction costs are greater than $10 million.
- ☐ Review AB 1402 design-build guidelines to determine whether the design-build method is suited for the project.
- ☐ Review *Education Code* sections 17250.10 through 17250.50, which define the design-build method.
- ☐ Hold a public meeting to evaluate whether the design-build or traditional design-bid-build method is suited to the project.

Proceeding with Design-Build Under AB 1402

- ☐ School board makes a determination in writing that design-build delivery will reduce project costs, expedite the project's completion, or provide features not achievable through the design-bid-build process.
- ☐ School board reviews AB 1402 design-build guidelines and adopts a resolution approving design-build.

Preparation of the Request for Qualifications (RFQ)

- ☐ Establish the procedure to prequalify design-build entities, including the questionnaire provided by the Department of Industrial Relations <*http://www.dir.ca.gov/*>.
- ☐ Verify that the prequalification procedure includes requirements stated in *Education Code* Section 17250.25(b).

Preparation of the Request for Proposal (RFP)

- ☐ Use a qualified professional design team to assist in preparing the RFP.
- ☐ Verify that the RFP satisfies *Education Code* sections 17250.25(a) and (c), which identify requirements for the project description, evaluation criteria, and selection process.

Award of the Design-Build Contract

- ☐ Verify all bonding, errors, omissions, general liability insurance coverage, and other specified requirements are satisfied or provided by the selected team.

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- ☐ School board issues written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.
- ☐ School board makes a public announcement of its decision in accordance with *Education Code* Section 17250.25(c)(2)(E).

Design and Construction Phases

- ☐ Retain a California-licensed architect and/or structural engineer to ensure compliance with the contract documents.
- ☐ Verify that deviations from the contract ". . . may only be allowed by written consent of the school district."
- ☐ Establish and enforce a labor compliance program or other options as specified by *Education Code* Section 17250.30(d).
- ☐ Obtain plan approval from the Division of the State Architect (DSA) prior to any building construction.
- ☐ Hire a DSA-certified inspector acceptable to the architect of record and structural engineer of record.

Post-Construction Phase

- ☐ School board submits report to Legislative Analyst's Office in accordance with *Education Code* Section 17250.45.
- ☐ Verify that the school district cannot pursue additional design-build projects without submitting a report within 60 days of project completion according to *Education Code* Section 17250.50.

Reporting Requirements of the Legislative Analyst's Office

The Legislative Analyst's Office (LAO) has been directed to prepare an analysis of the design-build program authorized by AB 1402 for public schools. To perform the analysis of the design-build program for schools from kindergarten through grade twelve proposed under this legislation, the LAO is asking school districts to report the following information:

Design-Build Project Information

1. The type of facility constructed
2. Number of students and grades served at the facility
3. Gross square feet of this project (if project is adding square footage)
4. Name of the design-build entity awarded the contract
5. School district's estimated project cost and schedule
6. Actual project schedule
7. Design-build contract amount at contract signing
8. Design-build contract amount at project completion
9. Description of any protests, lawsuits, arbitrations, or court settlements

School District Information

1. Total enrollment and grade range
2. Number and type of school sites in district

Project name	*Type of project*	*Number of students served*	*Total cost (excluding land)*

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3. List of construction projects over last five years

General Questions

1. Please provide a description of the relative merits of a project procured through AB 1402.
2. How did the district ensure a fair selection of the design-build company?
3. Did the cost, schedule, and quality of the project meet the school board's expectations? Please attach a copy of the findings.
4. Would you consider using design-build again? Why or why not?
5. What would you do differently?

Glossary

Architect of record

The architect whose stamp is affixed to the construction documents approved by the Division of the State Architect. This person will be the architect on the design-build team.

Best value*

A value determined by objective criteria that may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the school district.

Cost or price

The agreed-upon contract amount between the design-build entity and the school district.

Design-bid-build (DBB)

A procurement process in which the school district provides construction documents, prepared by an architect or engineer, from which contractors submit bids for completing the work described in the documents. Typically, the responsible bidder submitting the lowest price is selected to perform the work.

Design-build (D-B)*

A procurement process in which both the design and construction of a project are procured from a single entity.

Design-build entity*

A corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

Design professional duly licensed or registered in this state

A California-licensed architect or engineer.

*As defined in *Education Code* Section 17250.15.

Educational specifications

Educational specifications are interrelated statements that communicate (or specify) to the architect, the public, and other interested parties what educators believe is required of a proposed educational facility to support a specific educational program. Educational specifications serve as the link between the educational program and the school facilities. They translate the physical requirements of the educational program into words and enable the architect to visualize the educational activity to be conducted so that the architectural concepts and solutions support the stated educational program.

Labor compliance program

A means of ensuring payment of the general prevailing rate of per diem wages for public works construction projects. The school district shall be responsible for establishing and enforcing this program by following the requirements in Section 1771.50 of the *Labor Code.*

Performance specifications

Written specifications identifying minimum performance requirements of components, systems, or buildings without identifying product brands or models. This method does not disqualify any product that meets the criteria identified. The *Education Code* states, "The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state."

Prequalification

A process of determining whether a design-build entity is eligible to submit a proposal on a particular project. According to AB 1402 (*Education Code* Section 17250.25[b)][1]), school districts ". . . shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations." The statute names additional criteria, which must be included in the qualification process.

Prescriptive specifications

Written specifications that identify acceptable methods or manufacturers of project elements, often including model numbers. This method may eliminate an unlisted product or process that may be comparable to those listed.

Project delivery

The procurement method by which a school district completes a construction project (e.g., design-bid-build, lease-lease back, design-build).

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Project inspector

The project inspector is certified and approved by the Division of the State Architect. The school district hires the inspector typically on a per-project basis. The architect of record and structural engineer of record must approve the district's choice of an inspector.

Request for Proposal (RFP)*

As defined in the statute (*Education Code* Section 17250.25[a][1]), the RFP shall be prepared,

> . . . setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs.

The RFP shall do all of the following:

> (A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity. (B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the school district. (C) Include a section identifying and describing the following: (i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors. (ii) The methodology and rating or weighting scheme that will be used by the school district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values. (iii) The relative importance or weight assigned to each of the factors identified in the request for proposal. (iv) As an alternative to clause (iii), the governing board of a school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following: (I) Significantly more important than cost or price. (II) Approximately equal in importance to cost or price. (III) Significantly less important than cost or price. (v) If the school district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

*As defined in *Education Code* Section 17250.25(a)(1).

Safety record*

Deemed "acceptable" if its experience modification rate for the most recent three-year period is an average of 1.00 or less and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the *Labor Code.*

Skilled labor force availability*

An agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the two years prior to enactment of this act.

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*As defined in *Education Code* Section 17250.25(g) and (f).

Appendix A
Resources

American Institute of Architects, California Council

1303 J Street, Suite 200
Sacramento, CA 95814
http://www.aia.org/

Associated General Contractors of California

3095 Beacon Boulevard
West Sacramento, CA 95691
http://www.agc-ca.org

California Department of Education School Facilities Planning Division

660 J Street, Suite 350
Sacramento, CA 95814
http://www.cde.ca.gov/facilities

California Energy Commission

1516 Ninth Street
Sacramento, CA 95814-5512
http://www.energy.ca.gov/

Coalition for Adequate School Housing

1130 K Street, Suite 210
Sacramento, CA 95814
http://www.cashnet.org/

Collaborative for High Performance Schools

c/o Eley Associates
142 Minna Street
San Francisco, CA 94105
http://www.chps.net/

Construction Employers' Association

3800 Watt Avenue, Suite 215
Sacramento, CA 95821
http://www.cea-ca.org/

Department of Industrial Relations

770 L Street, Suite 1160
Sacramento, CA 95814
http://www.dir.ca.gov/

Design-Build Institute of America

1010 Massachusetts Avenue, NW, Suite 350
Washington, DC 20001
http://www.dbia.org/

Division of the State Architect

1130 K Street, Suite 101
Sacramento, CA 95814
http://www.dsa.ca.gov

Legislative Analyst's Office

925 L Street, Suite 1000
Sacramento, CA 95814
http://www.lao.ca.gov/

Office of Public School Construction

1130 K Street, Suite 400
Sacramento, CA 95814
http://www.opsc.dgs.ca.gov/

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Appendix B
References

CHPS Best Practices Manual

The Collaborative for High Performance Schools
c/o Eley Associates
142 Minna Street
San Francisco, CA 94105
http://www.chps.net/

Design-Build Contracting Handbook

Robert F. Cushman and Michael C. Loulakis
Aspen Publishers, Inc.
ISBN: 0735521824
http://www.aspenpublishers.com/

Design-Build for the Design Professional

G. William Quatman
Aspen Publishers, Inc.
ISBN 0735517274
http://www.aspenpublishers.com/

Design-Build Manual of Practice, Volumes I and II

Design-Build Institute of America
1010 Massachusetts Avenue, NW, Suite 350
Washington, DC 20001
http://www.dbia.org/

Design-Build: Planning Through Development

Jeffrey L. Beard, Michael Loulakis, and Edward Wundram
Design-Build Institute of America
1010 Massachusetts Avenue, NW, Suite 350
Washington, DC 20001
http://www.dbia.org/

Handbook on Project Delivery

The American Institute of Architects, California Council
1303 J Street, Suite 200
Sacramento, CA 95814
http://www.aia.org/

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement (OERI)
Educational Resources Information Center (ERIC)

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